IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.876 OF 2004
IN
SUIT NO.513 OF 1983

Smt.Arparna S.Joglekar .. Plaintiff

Vs.

Mr.Ravindra Dhake & Ors. .. Defendants

And

Madhukar Dhake & Ors. .. Respondents

Ms.J.M.Pandhi for the plaintiff

Mr.Vasant for respondent no.1

Mr.N.N.Bhadrashete for defendant no.6

CORAM : S.U.KAMDAR, J

DATED : 11TH APRIL 2005

P.C.:

1. The present Chamber Summons is taken out to bring the legal heirs of the defendant no.1 on record. There is a substantial delay of 3759 days. However, looking at the fact that the plaintiff is a lady and the claim is in respect of specific performance of an agreement pertaining to purchase of residential flat, I condone the delay. I also take into consideration the Judgment of the Apex

Court in the case of Mithailal Dalsangar Singh and others Vs. Annabai Devram Kini and Others reported in AIR 2003 SUPREME COURT 4244 in para 9 as under:

> "9. The Courts have to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the Court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of 'sufficient cause' within the meaning of sub rule (1) of Rule (9) of Order 22 and of Section 5 of the Indian Limitation Act 19063 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction."

2. However, in view of the delay, I direct the plaintiff to pay cost quantified at Rs.5000/-to the defendants. In view thereof, Chamber summons is made absolute in terms of prayer clause (a), (b) and (c) accordingly.